

**GERSTMAN SCHWARTZ**<sup>LLP</sup>  
ATTORNEYS AT LAW

May 19, 2021

**VIA CM/ECF & EMAIL**

The Honorable Victor Marrero ([chambersnysdmarrero@nysd.uscourts.gov](mailto:chambersnysdmarrero@nysd.uscourts.gov))  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

Re: *National Coalition on Black Civil Participation et al. v. Wohl et al.*, United States  
District Court, Southern District of New York, Case No. 1:20-cv-08668

Dear Judge Marrero:

For the sake of clarity and to preserve the record for all purposes, including prospective appeals, we write to respectfully correct the record. Specifically, Your Honor's Decision and Order dated May 19, 2021 states, in pertinent part, that:

On October 26, 2020, the Court held a hearing (the "October 26 Hearing") on Plaintiffs' motion for a TRO at which Wohl and Burkman appeared pro se, as their secured counsel was not yet available. (See Dkt. No. 53, at 3.) The Court provided time for Burkman and Wohl to present their case pro se and gave them an opportunity to supplement their case through a submission by their counsel the following day. (Id. at 4.) At the October 26 Hearing, Burkman and Wohl made certain admissions, such as acknowledging that they had caused the robocalls to be issued. (Id. at 12.) [Dkt. No. 101].

As a point of clarification, as Mr. Burkman stated in his opening remarks at the October 26, 2020 hearing, in pertinent part, "Your Honor, this is Jack Burkman. Unfortunately, **we have not yet been able to secure counsel**. We did yesterday, and counsel will be available tomorrow...he will be available on the case literally within 24 hours or so..." [Dkt. No. 53]. Notwithstanding any ambiguity as to what "secured" means based on a pro se, layperson's understanding, we were not retained, and did not file our respective Notices of Appearance, until *after* the hearing. [Dkt. Nos. 34 and 35]. However Your Honor construed this representation by the pro se defendant, Your Honor opted to proceed with pro se defendants rather than adjourn the proceeding for 24 hours.

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Let me be perfectly clear, our firm was not retained, nor did we file Notices of Appearance until after the time of the hearing.

Respectfully, insofar as Your Honor characterized that these pro se defendants made “certain admissions”, it is important that we clarify the record.

Respectfully Submitted,  
/s/

David M. Schwartz  
Randy E. Kleinman